IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

WP(C).No. 32749 of 2006(W)

PETITIONER:

---

1. V. VENUGOPAL, S/O.VELAYUDHAN NAIR,
   SREE PADMAM, KARIYAM, POWDIKONAM P.O.,
   THIRUVANANTHAPURAM, WORKING AS HEAD CLERK,
   AUDIT WING, CIVIL SUPPLIES COMMISSIONERATE,
   THIRUVANANTHAPURAM.

2. B. RAJENDRAN NAIR, S/O.BHASKARA PILLAI,
   VISAKH BHAVAN, EKRA 108, KARIYAM,
   POWDIKONAM P.O., THIRUVANANTHAPURAM,
   WORKING AS PRE-PRIMARY SCHOOL HELPER,
   GOVERNMENT H.S. VANCHIYOOR,
   THIRUVANANTHAPURAM.

BY ADV. SRI.M.RAJAGOPALAN NAIR
SRI.G.BIJU

RESPONDENTS:

---

1. ANANTHAPURAM CO-OPERATIVE SOCIETY
   LTD.NO.T.184, REPRESENTED BY ITS
   SECRETARY, KAITHAMUKKU, THIRUVANANTHAPURAM.

2. C. JAYACHANDRAN NAIR,
   S/O.CHANDRASEKHARA NAIR, LAKSHMI MANDIRAM,
   T.C.NO.25/2657, AMBUJAVILASAM ROAD,
   VANCHIYOOR, THIRUVANANTHAPURAM.

R2 BY ADV. SRI.T.RAJASEKHARAN NAIR
R1 BY SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/04/2007, THE COURT ON 12/04/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF RECOVERY NOTICE DT.1.2.2006 ISSUED BY R1 TO 1ST PETITIONER.

P2: TRUE COPY OF REMINDER DT.12.7.2006 ISSUED BY R1 TO THE TALUK SUPPLY OFFICER.

P3: TRUE COPY OF REMINDER DT.18.8.2006 ISSUED BY R1 TO 2ND PETITIONER'S EMPLOYER.

P4: TRUE COPY OF REQUEST DT.30.10.2006 SUBMITTED BY 2ND PETITIONER BEFORE R1.

RESPONDENT'S EXHIBITS:

R2(a): TRUE PHOTOCOPY OF RELEVANT PAGES OF THE BANK STATEMENT OF R2 IN ACCOUNT NO.01190010143 FROM THE STATE BANK OF INDIA, PERSONAL BRANCH NO.1, M.G.ROAD, TRIVANDRUM.

R2(b): TRUE PHOTOCOPIES OF LAWYER NOTICES ISSUED TO PETITIONERS AND THEIR WIFE AND CHILDREN, BY R2.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....

W.P.(C) No.32749 of 2006

.....

Dated this the 12th day of April, 2007.

JUDGMENT

Prayer in the W.P. is for direction to the first respondent to proceed first for recovery against the debtor who is the second respondent. Petitioners are stated to be sureties for the loan availed by second respondent. Counsel appearing for second respondent contended that second respondent is only a name lender and the loan taken was utilised by petitioners. Counsel for the petitioners denied the allegations. I do not think this court should settle the dispute between principal debtor and the guarantors because the creditor can chose between the principal debtor and the surety for recovery. However, on equitable grounds, if property is mortgaged, then recovery should be made first by attachment and sale of mortgaged property. If no such security is furnished, it is open to the first respondent to proceed for recovery against the petitioners or the principal debtor. The W.P. is disposed of leaving freedom to the first respondent to proceed against any of the petitioners or second respondent or all of them together for recovery. It is between the petitioners and second respondent to settle dispute if any among them in civil court.

C.N.RAMACHANDRAN NAIR
Judge

pms